



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 19, 2023

IN THE MATTER OF:

Appeal Board No. 629437

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Case Nos. 629435, 629436 and 629437, the claimant appeals from the decisions of the Administrative Law Judge that sustained the initial determinations disqualifying the claimant from receiving benefits, effective February 10, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with overpayments of \$3,732.75 in benefits recoverable pursuant to Labor Law § 597 (4) and \$8,700

in Federal Pandemic Unemployment Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$3,647.02 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 629438, 629439 and 629440, the claimant appeals from the decisions of the Administrative Law Judge that sustained the initial determinations holding the claimant ineligible to receive benefits, effective February 26, 2021 through June 10, 2021, on the basis that the claimant was not capable of work; charging the claimant with overpayments of \$3,318 in benefits recoverable pursuant to Labor Law § 597 (4), \$237 in Pandemic

Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to §2107 (e) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES)

Act of 2020, and \$4,500 in Federal Pandemic Unemployment Compensation (FPUC)

benefits repayable pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 60 effective days and charging a civil penalty of \$1,208.25 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Administrative Law Judge held hearings at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed May 01, 2023 (023-04736), the Administrative Law Judge sustained the initial determinations.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant indicated that she did not appear at the adjourned telephone conference hearing because she did not hear her cell phone ring due to noise on the bus that she was riding. The Board has determined to provide the claimant with another opportunity to appear and present further testimony and evidence in this matter.

As there has been no confrontation between the parties since they appeared at separate hearings, the parties should review the transcripts or recordings from the April 3, 2023 and May 1, 2023 hearings prior to the remand hearing, as well as Exhibits 1-11. They then should be given an opportunity to cross-examine adverse testimony and object to the entry of the exhibits. To that end, the Commissioner of Labor should produce ASO Hearing Representative Feng and Clementia Palaguachi at the remand hearing.

On appeal, the claimant has provided some of the documents requested by the Administrative Law Judge at the first hearing held in this matter. These documents should be entered into evidence at the remand hearing. However, the claimant was directed to produce documentation of whether her two children attended school in-person or remotely in February 2021, and has yet to produce this specific information. The claimant should obtain this information and provide it to the Hearing Section prior to the remand hearing. At the hearing, she should also be questioned about her children's respective ages in February 2021.

The parties may produce any other relevant witnesses or documents. The Judge may take any further testimony and evidence necessary to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge are rescinded; and it is further

ORDERED, that the cases are remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER